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**From:** Lavoie, Tegan [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=EB301A7C4E8F47EF898C1DAB1DCF4E3B-LAVOIE, TEG]  
**Sent:** 3/11/2020 12:57:18 PM  
**To:** Emma Cheuse [echeuse@earthjustice.org]  
**CC:** kriley@earthjustice.org; Woody, Matthew [Woody.Matthew@epa.gov]; Tsirigotis, Peter [Tsirigotis.Peter@epa.gov]; Shine, Brenda [Shine.Brenda@epa.gov]  
**Subject:** RE: Request for docket material and comment extension: MON, Dkt. ID EPA-HQ-OAR-2018-0746

Dear Ms. Cheuse,

We have reviewed your request to reopen the public comment period for the proposed rule titled, "National Emission Standards for Hazardous Air Pollutants: Miscellaneous Organic Chemical Manufacturing Risk and Technology Review" (Docket ID No. EPA-HQ-OAR-2018-0746). As you are aware, EPA has reopened the comment period until March 19, 2020. However, EPA does not agree with the assertion that several materials were missing from the docket, based on the following:

- (1) Under section 307(d)(3) of the CAA, EPA is required to include a statement of basis and purpose in proposed rules subject to this subsection. In addition, section 307(d)(3) provides the following:

The statement of basis and purpose shall include a summary of-

- (A) the factual data on which the proposed rule is based;
- (B) the methodology used in obtaining and analyzing the data, and
- (C) the major legal and policy interpretations underlying the proposed rule.

... All data, information, and documents referred to in this paragraph on which the proposed rule relies shall be included in the docket on the date of publication of the proposed rule.

The discussions within EPA leading up to the development of the memo from EPA's Office of Research and Development (ORD) are generally protected by the deliberative process privilege and do not fall within the definition of materials required to be docketed. EPA has included the ORD memo itself in the docket.

- (2) The "Request for Correction" document from the American Chemistry Council (ACC) is available both in the Hydrochloric Acid Production docket (see EPA-HQ-OAR-2018-0417-0127) and on ACC's public webpage (<https://www.americanchemistry.com/Media/PressReleasesTranscripts/ACC-news-releases/ACC-Requests-Correction-to-Information-Used-In-National-Air-Toxics-Assessment.html>). As part of the MON RTR proposal, EPA stated that it was incorporating by reference all comments that were received at proposal in the Hydrochloric Acid Production docket into the MON docket (Docket ID No. EPA-HQ-OAR-2018-0746), therefore, the referenced ACC document was available for review during the comment period and is included as part of the record for the MON RTR.
- (3) The EPA's MON proposal relied entirely on the IRIS assessment and the memorandum produced by EPA's Office of Research and Development when assessing the risk from the source category in the proposed rule. The draft TCEQ document does not fall within the definition of materials required to be docketed under section 307(d) of the CAA. We note that the draft TCEQ document can also be found on TCEQ's public webpage at <https://www.tceq.texas.gov/toxicology/ethylene-oxide>. Commenters are welcome to seek out this publicly available document and use it as the basis of a comment if they choose.
- (4) No documents were shared at this meeting. Every change that was made to the proposed rule as part of OMB's review is documented in the docket at <https://www.regulations.gov/document?D=EPA-HQ-OAR-2018-0746-0030>. All written correspondence between OMB and EPA and drafts of the preamble that were shared between EPA and OMB during OMB review, including redline/strikeout versions of the proposed action, are included in the docket.
- (5) The drafts of proposed rules submitted to OMB for the interagency review process, all documents accompanying such drafts, and all written comments by other agencies and written responses to such comments must be placed in the docket under section 307(d)(4)(B)(ii) of the CAA. The documents cited do not fall within the definition of materials that are required to be docketed under either section 307(d)(3) or section 307(d)(4)(B)(ii) of the CAA. The referenced document is publicly available on EPA's website at [https://yosemite.epa.gov/sab/sabproduct.nsf/fedrgstr\\_activites/BD2B2DB4F84146A585257E9A0070E655/%24File/EPA-SAB-15-012+unsigned.pdf](https://yosemite.epa.gov/sab/sabproduct.nsf/fedrgstr_activites/BD2B2DB4F84146A585257E9A0070E655/%24File/EPA-SAB-15-012+unsigned.pdf). Commenters are welcome to seek out this publicly available document and use it as the basis of a comment if they choose.

- (6) In the memorandum on equipment leaks, EPA cites the Hancy, 2011 memo. The Hancy memo is included in the docket. Within the Hancy memo, there is a table which summarizes data from the National Enforcement Investigations Center (NEIC). The original NEIC data set is not available to us and was not used in the development of this rulemaking. All necessary data that was used in this analysis is available in the Hancy memo itself and also in the docket at <https://www.regulations.gov/document?D=EPA-HQ-OAR-2018-0746-0003>.

I trust the information provided has been helpful. If you have any questions or need additional information, please let me know.

Sincerely,

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**From:** Emma Cheuse <[echeuse@earthjustice.org](mailto:echeuse@earthjustice.org)>  
**Sent:** Wednesday, January 29, 2020 2:07 PM  
**To:** Lavoie, Tegan <[lavoie.tegan@epa.gov](mailto:lavoie.tegan@epa.gov)>; Woody, Matthew <[Woody.Matthew@epa.gov](mailto:Woody.Matthew@epa.gov)>; Tsirigotis, Peter <[Tsirigotis.Peter@epa.gov](mailto:Tsirigotis.Peter@epa.gov)>  
**Cc:** [kriley@earthjustice.org](mailto:kriley@earthjustice.org)  
**Subject:** Request for docket material and comment extension: MON, Dkt. ID EPA-HQ-OAR-2018-0746  
**Importance:** High

Dear Ms. Lavoie, Mr. Woody, and Mr. Tsirigotis:

This letter concerns EPA's proposed rule on Miscellaneous Organic Chemical Manufacturing, 84 Fed. Reg. 69,182, Dkt. ID EPA-HQ-OAR-2018-0746.

I am writing on behalf of Sierra Club to seek your prompt assistance in completing this public rulemaking docket with certain data, information, and documents that EPA cites, has considered, and on which EPA is relying, and to extend the comment deadline accordingly.

Both completion of the rulemaking docket and a comment deadline extension are required for the public to have adequate notice and an ability to comment on these materials while reviewing the proposed rule, and to fulfill rulemaking requirements of the Clean Air Act, 42 USC 7607(d)(3)-(7), (h).

For example, EPA's proposed rule cites and relies on:

- A memorandum from Kristina Thayer, the Office of Research and Development (ORD), dated Oct. 18, 2019, with an attached memorandum by Paul White, regarding the IRIS ethylene oxide (EtO) Assessment (<https://www.regulations.gov/document?D=EPA-HQ-OAR-2018-0746-0027>) (cited and relied on at 84 Fed. Reg. 69,218). That memo refers to an "inquiry from OAR [air office] to ORD about the dose-response selection for the IRIS ethylene oxide inhalation unit risk (IUR). Communication from OMB (such as the 10-22-2019 redline attachment) also refers to discussion on the IRIS factor and changes to the proposed rule preamble that refer to these memoranda. However, the docket contains no documents containing or presenting the referenced "inquiry," the source, the content, or form of that inquiry, nor any other documents or information explaining how or why the Thayer and White memoranda exist and what communication occurred to create them, or following up on them between EPA, IRIS, OMB, ACC, TCEQ, and/or any other parties inside or outside of the agency. EPA must provide in the public docket all emails, memoranda, and any other communications that led to the Thayer and White Memoranda and that presented, contained, described or discussed the "inquiry," its scope, its justification, its goals, and follow-up communication regarding the memoranda, as well as any other documents or information related to OAR's consideration of these memoranda and relevant to the public's review and understanding of the Thayer and White Memoranda.

- A “Request for Correction” submitted by the American Chemistry Council (ACC) to the OAR on the National Air Toxics Assessment risk estimates for ethylene oxide (Sept. 2018), 84 Fed. Reg. 69,218. That request for correction and all correspondence between EPA, the ACC, and any other relevant parties regarding that request for correction and the reference and consideration of that in connection with the proposed rule are missing from the docket.
- A “draft document” by the Texas Commission on Environmental Quality (TCEQ) that “disagreed” with EPA’s IRIS factor. *Id.* The TCEQ draft document, information it cites and on which it relies, and all correspondence regarding EPA’s discovery and consideration of that draft document with the TCEQ or any other parties regarding that document and the information it cites and on which it relies is also missing from the docket.
- A review by the Office of Management and Budget included a meeting and the OMB review then led to some “change” in the proposed rule. <https://www.reginfo.gov/public/do/eoDetails?rrid=129444>. The docket, however, contains no information or documentation such as notes or email correspondence regarding that meeting at OMB, in person and by teleconference on October 15, 2019, at 3:30pm, between OMB, EPA, and the following industry members: ACC, Huntsman, ExxonMobil, All 4, Lyondell Basel or any changes requested or made as a result of that meeting. <https://www.reginfo.gov/public/do/viewEO12866Meeting?viewRule=true&rin=2060-AT85&meetingId=4573&acronym=2060-EPA/OAR>.
- The OMB documentation (<https://www.regulations.gov/document?D=EPA-HQ-OAR-2018-0746-0030>) describes significant edits to the preamble to the proposed rule on the IRIS factor for ethylene oxide that EPA appears to have made at OMB’s request. It also includes citations of material that EPA and OMB considered but that appear not to be cited in the proposed rule or in the docket (such as the Science Advisory Board Review of the EPA’s evaluation of the inhalation carcinogenicity of ethylene oxide: Revised external review draft - August 2014 [EPA Report]. (EPA-SAB-15-012), cited in Redline 2 responses on 10-22-2019, but not placed into the docket). All of that information and any other material considered of this nature must be placed into the docket for review and a meaningful period for public comment on the proposed rule.
- The memorandum on equipment leaks (<https://www.regulations.gov/document?D=EPA-HQ-OAR-2018-0746-0003>) on which the proposed rule relies cites data from the National Enforcement Investigations Center (see p. 14 note 1), but to our knowledge that information has not been placed into the docket.
- Any other materials that EPA cites, has considered, and/or is relying on that is not currently in the public rulemaking docket, including correspondence with industry and/or states (like TCEQ) regarding the emission data to which EPA has referred.

Thus far, in the rulemaking docket we have been unable to find the above-described documents which EPA has stated it considered, cited, and relied upon for its proposed rule.

All of these documents, and any others that EPA considered, cited, and/or relied upon, must be included in the docket to satisfy the Act and to ensure a meaningful opportunity for public participation and comment on the proposed rule which EPA developed based in part on all of the above information.

As time is short before the current public comment deadline (February 18, 2020), and is less than the minimum 30-days required by the Act, 42 U.S.C. 7607(h), we wanted to raise this question with you as soon as possible to seek your assistance in locating these materials and extending the deadline for public comment. We would greatly appreciate your assistance ensuring that all materials on which EPA relies and which it considered to create the proposed rule are included in the public docket, with adequate time for review and comment.

Please contact me at your convenience to discuss what EPA plans to do to ensure it meets its obligations to provide the data, information, and documents on which it is relying for public notice and comment. As this critical information does not appear to be in the record, EPA must provide these documents in the record and extend the comment deadline accordingly.

Due to the prejudice to the public’s ability to comment meaningfully on the proposed rule that has resulted from EPA’s failure to complete the rulemaking docket, and the extent of material that EPA appears to have omitted from the public docket, we also respectfully request that EPA extend the comment deadline by 90 days, as we and Louisiana groups requested in the attached letter, to which EPA has not yet responded. It would be extremely prejudicial if EPA did not

extend the deadline by at least the same initial 45-day period as EPA initially provided on the proposed rule, once EPA corrects the public notice discrepancy and places all docket materials into the public docket because EPA and other parties have material that EPA is considering and relying on for a core part of the proposed rule on health impacts from toxic air pollution, including ethylene oxide, and the public does not.

Failing to place these materials into the docket and provide a comment period extension would violate the Act's core notice-and-comment requirements and would cause prejudice to Sierra Club and members of the public affected by and exposed to MON sources' emissions who wish to have adequate time to try to persuade EPA to strengthen these emission standards and reduce their exposure and resulting health harms. 42 U.S.C. 7607(d)(3)-(7), (h). Denying this additional time to the public when EPA appears to have conferred and consulted with industry groups throughout this rulemaking, and given industry and some states (like TCEQ) opportunities to provide input even before releasing the proposed rule to the public, would be particularly prejudicial, unlawful, and arbitrary. 42 U.S.C. 7607(d).

Thank you for your time and consideration of this matter. Please feel free to contact me or my colleague Kathleen Riley by telephone at (202) 667-4500 ext. 5220 or 5227 if you would like to discuss or have any questions.

Sincerely,

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